

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0497

HOUSE APPROPRIATIONS ENGROSSED NO. **HB 1270** - 2/10/2012

Introduced by: The Committee on Appropriations at the request of the Office of the Governor

1 FOR AN ACT ENTITLED, An Act to revise the time period for which unclaimed property is
2 presumed abandoned and to revise certain provisions regarding the publication notice of
3 unclaimed property.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 43-41B-2 be amended to read as follows:

6 43-41B-2. (a) Except as otherwise provided by this chapter, all intangible property,
7 including any income or increment derived therefrom, less any lawful charges, that is held,
8 issued, or owing in the ordinary course of a holder's business and has remained unclaimed by
9 the owner for more than ~~five~~ three years after it became payable or distributable is presumed
10 abandoned.

11 (b) Property is payable or distributable for the purpose of this chapter notwithstanding the
12 owner's failure to make demand or to present any instrument or document required to receive
13 payment.

14 Section 2. That § 43-41B-4 be amended to read as follows:



1 43-41B-4. (a) Any sum payable on a travelers check that has been outstanding for more than
2 fifteen years after its issuance is presumed abandoned unless the owner, within fifteen years, has
3 communicated in writing with the issuer concerning it or otherwise indicated an interest as
4 evidenced by a memorandum or other record on file prepared by an employee of the issuer.

5 (b) Any sum payable on a money order or similar written instrument, other than a third-party
6 bank check, that has been outstanding for more than ~~five~~ three years after its issuance is
7 presumed abandoned unless the owner, within ~~five~~ three years, has communicated in writing
8 with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum
9 or other record on file prepared by an employee of the issuer.

10 (c) A holder may not deduct from the amount of a travelers check or money order any charge
11 imposed by reason of the failure to present the instrument for payment unless there is a valid and
12 enforceable written contract between the issuer and the owner of the instrument pursuant to
13 which the issuer may impose a charge and the issuer regularly imposes such charges and does
14 not regularly reverse or otherwise cancel them.

15 (d) No sum payable on a travelers check, money order, or similar written instrument, other
16 than a third-party bank check, as described in subsections (a) and (b), may be subjected to the
17 custody of this state as unclaimed property unless:

18 (1) The records of the issuer show that the travelers check, money order, or similar
19 written instrument was purchased in this state;

20 (2) The issuer has its principal place of business in this state and the records of the issuer
21 do not show the state in which the travelers check, money order, or similar written
22 instrument was purchased; or

23 (3) The issuer has its principal place of business in this state, the records of the issuer
24 show the state in which the travelers check, money order, or similar written

instrument was purchased and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

(e) Notwithstanding any other provisions of this chapter, subsection (d) applies to sums payable on travelers checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state.

Section 3. That § 43-41B-5 be amended to read as follows:

43-41B-5. (a) Any sum payable on a check, draft, or similar instrument, except those subject to § 43-41B-4, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than ~~five~~ three years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within ~~five~~ three years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

(b) A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them.

Section 4. That § 43-41B-6 be amended to read as follows:

43-41B-6. (a) Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless in the case of a matured time deposit, the

1 banking or financial organization has mailed, at least once in ~~five~~ three years certified mail
2 requesting a return receipt, to the owner and the receipt has been returned and signed by the
3 addressee, or unless the owner, within ~~five~~ three years has:

4 (1) In the case of a deposit, increased or decreased its amount or presented the passbook
5 or other similar evidence of the deposit for the crediting of interest;

6 (2) Communicated in writing with the banking or financial organization concerning the
7 property;

8 (3) Otherwise indicated an interest in the property as evidenced by a memorandum or
9 other record on file prepared by an employee of the banking or financial organization;

10 (4) Owned other property to which paragraph (1), (2), or (3) applies and if the banking
11 or financial organization communicates in writing with the owner with regard to the
12 property that would otherwise be presumed abandoned under this subsection at the
13 address to which communications regarding the other property regularly are sent;

14 (5) Had another relationship with the banking or financial organization concerning which
15 the owner has:

16 (i) Communicated in writing with the banking or financial organization; or

17 (ii) Otherwise indicated an interest as evidenced by a memorandum or other
18 record on file prepared by an employee of the banking or financial
19 organization and if the banking or financial organization communicates in
20 writing with the owner with regard to the property that would otherwise be
21 abandoned under this subsection at the address to which communications
22 regarding the other relationship regularly are sent; or

23 (6) Received tax reports or regular statements of the deposit by mail from the banking
24 or financial organization regarding the deposit. Receipt of the statement by the owner

1 is presumed if the statement is mailed first class by the banking or financial
2 organization and not returned.

3 (b) For purposes of subsection (a) property includes any income, increments, interest, or
4 dividends.

5 (c) A holder may not impose with respect to property described in subsection (a) any charge
6 due to dormancy or inactivity or cease payment of interest unless:

7 (1) There is an enforceable written contract between the holder and the owner of the
8 property pursuant to which the holder may impose a charge or cease payment of
9 interest;

10 (2) For property in excess of two dollars, the holder, no more than three months before
11 the initial imposition of those charges or cessation of interest, has given written
12 notice to the owner of the amount of those charges at the last known address of the
13 owner stating that those charges will be imposed or that interest will cease, but the
14 notice provided in this section need not be given with respect to charges imposed or
15 interest ceased before July 1, 1993; and

16 (3) The holder regularly imposes such charges or ceases payment of interest and does not
17 regularly reverse or otherwise cancel them or retroactively credit interest with respect
18 to the property.

19 (d) Any property described in subsection (a) that is automatically renewable is matured for
20 purposes of subsection (a) upon the expiration of its initial time period, but in the case of any
21 renewal to which the owner consents at or about the time of renewal by communicating in
22 writing with the banking or financial organization or otherwise indicating consent as evidenced
23 by a memorandum or other record on file prepared by an employee of the organization, the
24 property is matured upon the expiration of the last time period for which consent was given. If,

1 at the time provided for delivery in § 43-41B-20, a penalty or forfeiture in the payment of
2 interest would result from the delivery of the property, the time for delivery is extended until
3 the time when no penalty or forfeiture would result.

4 Section 5. That § 43-41B-7 be amended to read as follows:

5 43-41B-7. (a) Funds held or owing under any life or endowment insurance policy or annuity
6 contract that has matured or terminated are presumed abandoned if unclaimed for more than
7 ~~four~~ three years after the funds became due and payable as established from the records of the
8 insurance company holding or owing the funds, but property described in subsection (c)(2) is
9 presumed abandoned if unclaimed for more than ~~four~~ three years.

10 (b) If a person other than the insured or annuitant is entitled to the funds and an address of
11 the person is not known to the company or it is not definite and certain from the records of the
12 company who is entitled to the funds, it is presumed that the last known address of the person
13 entitled to the funds is the same as the last known address of the insured or annuitant according
14 to the records of the company.

15 (c) For purposes of this chapter, a life or endowment insurance policy or annuity contract
16 not matured by actual proof of the death of the insured or annuitant according to the records of
17 the company is matured and the proceeds due and payable if:

18 (1) The company knows that the insured or annuitant has died; or

19 (2)(i) The insured has attained, or would have attained if he were living, the limiting age
20 under the mortality table on which the reserve is based;

21 (ii) The policy was in force at the time the insured attained, or would have
22 attained, the limiting age specified in subparagraph (i); and

23 (iii) Neither the insured nor any other person appearing to have an interest in the
24 policy within the preceding ~~four~~ three years, according to the records of the

1 company, has assigned, readjusted, or paid premiums on the policy, subjected
2 the policy to a loan, corresponded in writing with the company concerning the
3 policy, or otherwise indicated an interest as evidenced by a memorandum or
4 other record on file prepared by an employee of the company.

5 (d) For purposes of this chapter, the application of an automatic premium loan provision or
6 other nonforfeiture provision contained in an insurance policy does not prevent a policy from
7 being matured or terminated under subsection (a) if the insured has died or the insured or the
8 beneficiary of the policy otherwise has become entitled to the proceeds thereof before the
9 depletion of the cash surrender value of a policy by the application of those provisions.

10 (e) If the laws of this state or the terms of the life insurance policy require the company to
11 give notice to the insured or owner that an automatic premium loan provision or other
12 nonforfeiture provision has been exercised and the notice, given to an insured or owner whose
13 last known address according to the records of the company is in this state, is undeliverable, the
14 company shall make a reasonable search to ascertain the policyholder's correct address to which
15 the notice must be mailed.

16 (f) Notwithstanding any other provision of law, if the company learns of the death of the
17 insured or annuitant and the beneficiary has not communicated with the insurer within four
18 months after the death, the company shall take reasonable steps to pay the proceeds to the
19 beneficiary.

20 (g) Commencing on July 1, 1994, every change of beneficiary form issued by an insurance
21 company under any life or endowment insurance policy or annuity contract to an insured or
22 owner who is a resident of this state must request the following information:

- 23 (1) The name of each beneficiary, or if a class of beneficiaries is named, the name of
24 each current beneficiary in the class;

(2) The address of each beneficiary; and

(3) The relationship of each beneficiary to the insured.

Section 6. That § 43-41B-10 be amended to read as follows:

43-41B-10. (a) Except as provided in subsections (b) and (e), stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for ~~five~~ three years and the owner within ~~five~~ three years has not:

(1) Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(2) Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(b) At the expiration of a ~~five-year~~ three-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least ~~five~~ three dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If ~~five~~ three dividends, distributions, or other sums are paid during the ~~five-year~~ three-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If ~~five~~ three dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been ~~five~~ three dividends, distributions, or

1 other sums that have not been claimed by the owner.

2 (c) The running of the ~~five-year~~ three-year period of abandonment ceases immediately upon
3 the occurrence of a communication referred to in subsection (a). If any future dividend,
4 distribution, or other sum payable to the owner as a result of the interest is subsequently not
5 claimed by the owner, a new period of abandonment commences and relates back to the time
6 a subsequent dividend, distribution, or other sum became due and payable.

7 (d) At the time an interest is presumed abandoned under this section, any dividend,
8 distribution, or other sum then held for or owing to the owner as a result of the interest, and not
9 previously presumed abandoned, is presumed abandoned.

10 (e) This chapter does apply to any stock or other intangible ownership interest enrolled in
11 a plan that provides for the automatic reinvestment of dividends, distributions, or other sums
12 payable as a result of the interest if the records available to the administrator of the plan show,
13 with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the
14 owner has not within ~~five~~ three years communicated in any manner described in subsection (a).

15 Section 7. That § 43-41B-13 be amended to read as follows:

16 43-41B-13. (a) Intangible property and any income or increment derived therefrom held by
17 fiduciaries and agents for the benefit of another person is presumed abandoned unless the owner,
18 within ~~five~~ three years after it has become payable or distributable, has increased or decreased
19 the principal, accepted payment of principal or income, communicated concerning the property,
20 or otherwise indicated an interest as evidenced by a memorandum or other record on file
21 prepared by the fiduciary.

22 (b) Funds in an individual retirement account or a retirement plan for self-employed
23 individuals or similar account or plan established pursuant to the Internal Revenue laws of the
24 United States are not payable or distributable within the meaning of subsection (a) unless, under

1 the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

2 (c) For the purpose of this section, a person who holds property as an agent for a business
3 association is deemed to hold the property in a fiduciary capacity for that business association
4 alone, unless the agreement between him and the business association provides otherwise.

5 (d) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary
6 capacity for a business association alone is the holder of the property only insofar as the interest
7 of the business association in the property is concerned, and the business association is the
8 holder of the property insofar as the interest of any other person in the property is concerned.

9 Section 8. That § 43-41B-15 be amended to read as follows:

10 43-41B-15. (a) A gift certificate or a credit memo issued in the ordinary course of an issuer's
11 business which remains unclaimed by the owner for more than ~~five~~ three years after becoming
12 payable or distributable is presumed abandoned.

13 (b) In the case of a gift certificate, the amount presumed abandoned is the price paid by the
14 purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned
15 is the amount credited to the recipient of the memo.

16 Section 9. That § 43-41B-17 be amended to read as follows:

17 43-41B-17. Any tangible and intangible property held in a safe deposit box or any other
18 safekeeping repository or agency or collateral deposit box in this state in the ordinary course of
19 the holder's business and proceeds resulting from the sale of the property permitted by other law,
20 which remain unclaimed by the owner for more than ~~five~~ three years after the lease or rental
21 period on the box or other repository has expired, are presumed abandoned.

22 Section 10. That § 43-41B-19 be amended to read as follows:

23 43-41B-19. (a) The administrator shall cause a notice to be published ~~not later than March~~
24 ~~first of the year~~ within the quarter immediately following the report required by § 43-41B-18

1 at least once ~~a week for two consecutive weeks~~ in a newspaper of general circulation in the
2 county of this state in which is located the last known address of any person to be named in the
3 notice. If no address is listed or the address is outside this state, the notice must be published
4 in the county in which the holder of the property has its principal place of business within this
5 state.

6 (b) The published notice must be entitled "Notice of Names of Persons Appearing to be
7 Owners of Abandoned Property" and contain:

8 (1) The names in alphabetical order and last known address, if any, of persons listed in
9 the report and entitled to notice within the county as specified in subsection (a);

10 (2) A statement that information concerning the property and the name and last known
11 address of the holder may be obtained by any person possessing an interest in the
12 property by addressing an inquiry to the administrator; and

13 (3) A statement that if proof of claim is not presented by the owner and the owner's right
14 to receive the property must be established to the administrator's satisfaction to whom
15 all claims must be directed.

16 (c) The administrator is not required to publish in the notice any items of less than ~~fifty one~~
17 hundred twenty-five dollars unless the administrator considers their publication to be in the
18 public interest.

19 (d) This section is not applicable to sums payable on travelers checks, money orders, and
20 other written instruments presumed abandoned under § 43-41B-4.